Public Service Staffing Tribunal

2009 – 2010

Report on Plans and Priorities

The Honourable James Moore, P.C., M.P.
Minister of Canadian Heritage
and Official Languages

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Chairperson's Message

As Chairperson of the Public Service Staffing Tribunal, I am pleased to present this Report on Plans and Priorities.

The Tribunal is an independent, quasi-judicial body with a mandate to consider and dispose of complaints under the provisions contained in the *Public Service Employment Act* for staffing and staffing recourse in the federal public service.

The Tribunal has adopted an approach that allows parties to a complaint to resolve their differences through informal processes based on communication and sustained dialogue. Accordingly, the *Public Service Staffing Tribunal Regulations* provide several opportunities in the complaint process for the parties to come to a resolution without a formal hearing, such as a 25-day exchange-of-information period, pre-hearing conferences and mediation.

These informal mechanisms have proven to be very successful in the achievement of the Tribunal's strategic outcome: The fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada. The priorities described in this report are intended to support the Tribunal's program activity: The adjudication and mediation of complaints filed under the *Public Service Employment Act.*

To strengthen and build on the Tribunal's successes to date, the PSST has identified the following main priorities for 2009–2010:

- Implement settlement conferences in the complaint process
- Rationalize complaint policies and procedures
- Enhance external communications

With the introduction of settlement conferences where parties will be able to discuss the strengths and weaknesses of their case with a Tribunal member, the Tribunal will provide an additional opportunity for resolving complaints informally while continuing to strengthen its existing polices and procedures. Enhanced communications with its key stakeholders will help to increase awareness of the Tribunal's processes and promote the use of alternate dispute resolution.

In this way, the Tribunal contributes to the building of a public service characterized by fair, transparent employment practices, respect for employees, effective dialogue and recourse aimed at resolving appointment issues.

Guy Giguère
Chairperson and Chief Executive Officer

Section I
Departmental Overview

Raison d'être

The Public Service Staffing Tribunal ("the Tribunal") is an independent, quasi-judicial body established under the *Public Service Employment Act* (PSEA) to deal with complaints related to internal appointments and lay-offs in the federal public service. The Tribunal conducts hearings and provides mediation services in order to resolve complaints.

Responsibilities

The Tribunal derives its mandate from the PSEA and is responsible for the impartial and timely consideration and disposition of complaints submitted under the Act with respect to internal appointment and lay-off processes in the Government of Canada.

By providing transparent, impartial and sound decision-making for complaints as well as the support necessary to help parties resolve staffing disputes as informally as possible, the Tribunal is both accessible and responsive to its stakeholders – namely, deputy heads, human resources specialists, bargaining agents and public servants – and contributes to the effective management of human resources to the benefit of federal public service departments and agencies, managers, employees and Canadians at large.

Strategic Outcome and Program Activity Architecture

The chart below illustrates the Tribunal's complete framework of program activities, results and outputs which contribute to its strategic outcome:

Strategic Outcome	**Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada**
Program Activity	Adjudication and mediation of complaints filed under the *Public Service Employment Act*
Expected Results	• Tribunal decisions are timely, sound and well reasoned • Optimal utilization of Tribunal's dispute resolution services by parties
Outputs	• Complaints processed • Mediation sessions conducted • Mediation training courses delivered

Planning Summary

Financial Resources ($ thousands)

2009–10[1]	2010–11[1]	2011–12[1]
5,478	5,478	5,478

[1] Includes earmarked funding provided in Budget 2009, resulting from Strategic Review to enable the Tribunal to pursue its mandate.

Human Resources (Full-Time Equivalent)

2009–10	2010–11	2011–12
37	37	37

Summary Table

Strategic Outcome

Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada

Performance Indicator	Target
Percentage of complaints referred to judicial review on the grounds that the Tribunal failed to observe a principle of natural justice, procedural fairness or other procedure	3%

	($ thousands)				
	Forecast Spending[1]	Planned Spending[2]			Alignment to Government of Canada Outcomes
Program Activity	2008–09	2009–10	2010–11	2011–12	
Adjudication and mediation of complaints filed under the *Public Service Employment Act*	2,800	4,000	4,000	4,000	The Tribunal's activities are aligned with the "Government Affairs" outcome. The resources allocated to the Tribunal contribute to supporting a public service that reflects excellence and leadership.
Internal Services: Human Resources, Finance, Information Management, Communications Information Technology and Administrative Services	1,500	1,478	1,478	1,478	
Total	4,300	5,478	5,478	5,478	

[1] Reflects the best forecast of cash expenditures to the end of the fiscal year.

[2] The planned spending includes earmarked funding provided in Budget 2009, resulting from Strategic Review to enable the Tribunal to pursue its mandate

Contribution of Priorities to Strategic Outcome(s)

Operational Priorities	Type	Links to Strategic Outcome	Description
Implementation of settlement conferences	New	Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada	The Tribunal endeavours to help the parties to a complaint resolve the issues in dispute as informally and as efficiently as possible. During a settlement conference, the parties will have the opportunity to discuss the strengths and weaknesses of their case with the assistance of a Tribunal member in an effort to resolve the complaint. The Tribunal's plan for settlement conferences includes an assessment of its readiness to introduce such a process, a review of its body of jurisprudence and consultation with its stakeholders.
Rationalization of operational policies and procedures	Ongoing	Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada	The Tribunal is a relatively new organization and continues to adjust its policies and procedures as required. The continued improvement of the Tribunal's case management system is a key component of the complaint process.
Enhancement of external Communications	Ongoing	Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada	In preparation for the review of the PSEA in 2010, the Tribunal seeks to maintain a high awareness among its stakeholders of its mandate, processes and results. Accordingly, a discussion group established to discuss administrative and operational issues related to the processing of complaints will be reactivated. As well, improvements to the Tribunal's website will be made to ensure ready access to information concerning the Tribunal and opportunities for speaking engagements will be sought.

Management Priorities	Type	Links to Strategic Outcome(s)	Description
Internal communications	Ongoing	Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada	Effective internal communications are crucial to the Tribunal in order to ensure that all complaints are processed consistently and efficiently. The Tribunal will continue the development of its information management system and enhance its Intranet to foster better internal communications.
Strengthen human resources management	Ongoing	Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada	The effective management of the Tribunal's human resources is key to the ability of the Tribunal to consider and dispose of complaints. Training opportunities will be provided as necessary to ensure continued, high quality performance; team-building efforts will continue and an emphasis will be placed on greater recognition of a job well done.

Risk Analysis

In the three years since its establishment, the Tribunal has succeeded in dealing with an unexpectedly high volume of complaints. When the Tribunal was created, it was estimated that approximately 400 complaints would be submitted annually. However, the volume has increased steadily since the Tribunal's establishment: There were 15 complaints in 2005–2006, 438 in 2006–2007 and 742 in 2007–2008.

Nonetheless, Tribunal staff and members possess a wide variety of experience and skills and have contributed to the development of tools and practices that have, in turn, resulted in the issuance of sound and consistent Tribunal decisions and a high settlement rate.

For example, an effective decision review process has helped to ensure that the Tribunal issues sound and consistent decisions. As well, a number of functions have been added to the Tribunal's case management system to track the progress of complaints and provide statistical information regarding complaints. The Tribunal's interest-based negotiation and mediation training continues to be delivered on a regular basis to key stakeholders and thus contributes to a greater understanding of the process and to the success of the Tribunal's mediation services.

With a full staff complement and a solid infrastructure in place, the Tribunal is well placed to refine its processes as well as implement new initiatives to continue to ensure the fair and impartial resolution of staffing complaints in the federal public service.

Nevertheless, the following factors could affect the Tribunal's operations over the course of the coming year:

- Appointment of new members

  Given the ever-increasing number of complaints submitted to the Tribunal, delays in filling vacant member positions could create a back-log of complaints waiting to be heard and increase the amount of time it takes to render a decision.

- Economic downturn

  The current economic climate has already had an impact on salary increases in collective agreements and could further affect human resources management in the public service. This could result in an increase in the number of complaints to the Tribunal.

- Public service renewal

  The emphasis on recruitment could result in a general increase in the number of staffing actions and thus an increase in the number of complaints before the Tribunal.

- Increase in use of collective staffing processes

  Increased use of collective staffing processes has repercussions for the processing of complaints in that the process becomes more complex for reasons such as: increase in the number parties to be contacted and difficulty in identifying the delegated manager.

- 2010 Review of *Public Service Employment Act* (PSEA)
- Audit of the Implementation of the *Public Service Modernization Act* (PSMA)

  The PSMA calls for a review of the Act and its "administration and operations" to be conducted five years after its coming-into-force; the review has been scheduled to take place in 2010. In addition to this review, the Auditor-General will be conducting an audit of the implementation of the PSMA in the near future. Both of these endeavours will give rise to some criticism of the Act and its effect upon the staffing process, including recourse, by key stakeholders – i.e., deputy heads, delegated managers and bargaining agents.

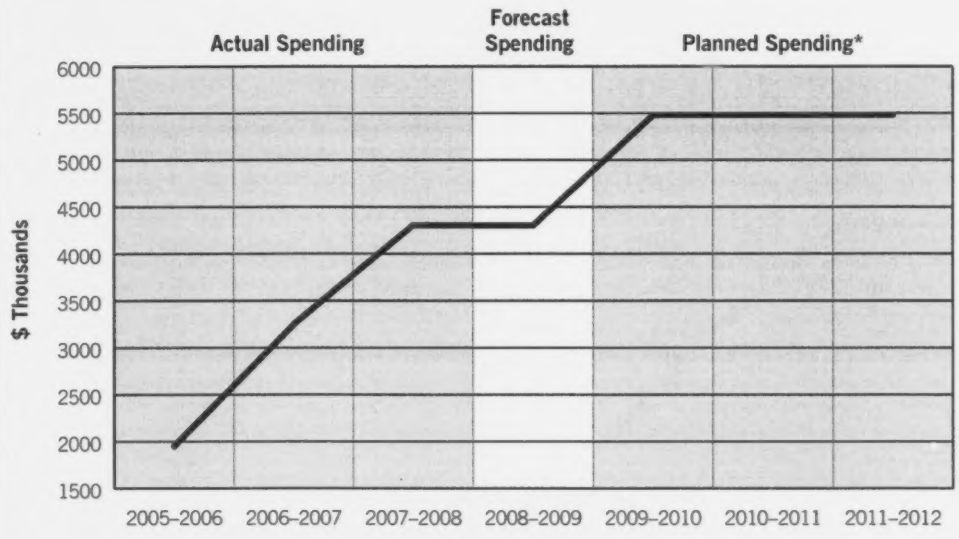
  In order to meet these challenges, the Tribunal will continue to enhance its internal communications and case management system and revise or adopt directives and policies as required, particularly with respect to the scheduling of mediation and the postponement of hearings.

Expenditure Profile

In 2008, six central human resources organizations, including the Public Service Staffing Tribunal, conducted a strategic review of the central human resources management functions they deliver to support government departments and agencies. The results of the review were announced in January. Funding for the Tribunal was earmarked, thereby ensuring that the Tribunal can focus primarily on its mandate and strategic priorities.

The figure below illustrates the Tribunal's spending trend from 2005–2006 to 2011–2012.

Spending Trend



* The planned spending includes earmarked funding provided in Budget 2009, resulting from Strategic Review to enable the Tribunal to pursue its mandate.

For the 2005–2006 to 2008–2009 periods, the total spending includes all Parliamentary appropriation sources: Main Estimates, Supplementary Estimates, transfers from Treasury Board Vote 15 and 23 and also includes carry forward adjustments. For the 2009–2010 to 2013–2014 periods, the total spending corresponds to the planned spending which includes earmarked funding provided in Budget 2009, resulting from Strategic Review to enable the enable the Tribunal to pursue its mandate.

Voted and Statutory Items

($ thousands)

This table illustrates the way in which Parliament approved the Tribunal's resources.

Voted & Statutory Item	Public Service Staffing Tribunal	2008–2009 Main Estimates	2009–2010 Main Estimates
105	Program expenditures	4,481	1,567
(S)	Contributions to employee benefit plans	487	12
	TOTAL	4,968	1,579

The decrease of $3.4 M between the current and the previous Main Estimates is mainly attributed to a decrease of funding approvals. As noted elsewhere, the Tribunal is seeking a permanent adjustment to its reference levels in order to pursue its mandate.

Section II

Analysis of Program Activities by Strategic Outcome

Strategic Outcome:

Fair and impartial resolution of disputes related to internal appointments and lay-offs in the Government of Canada

Performance Indicator:

Percentage of complaints referred to judicial review on the grounds that the Tribunal failed to observe a principle of natural justice, procedural fairness or other procedure

Target: 3%

Program Activity: Adjudication and mediation of complaints filed under the *Public Service Employment Act*

Human Resources (FTEs) **and Planned Spending** ($ thousands)

2009–10		2010–11		2011–12	
FTEs	**Planned Spending**[1]	**FTEs**	**Planned Spending**[1]	**FTEs**	**Planned Spending**[1]
28	4,000	28	4,000	28	4,000

[1] The planned spending includes earmarked funding provided in Budget 2009, resulting from Strategic Review to enable the Tribunal to pursue its mandate

Program Activity Expected Results	Performance Indicators	Targets
Tribunal decisions are timely, sound and well reasoned	• Percentage of where reasons are issued within two months of the hearing	80%
	• Percentage of Tribunal decisions upheld on judicial review	95%
Optimal utilization of Tribunal's dispute resolution services	• Percentage of mediations resulting in withdrawal of complaint	70%

Program Activity Summary

As previously mentioned, the number of complaints submitted to the Tribunal has increased steadily since 2005. Based on our first three years of operation, it is estimated that the case load will reach 1,000 in 2009–2010 and could climb to 1,200 by 2013.

Each complaint is automatically referred to mediation unless one of the parties declines to participate. In addition to mediation, the Tribunal offers other informal opportunities, such as pre-hearing conferences and a 25-day period for an exchange of information between the parties, to resolve the complaint.

The mediation of staffing complaints by the Tribunal has proven to be very successful; nearly 80% of all complaints where mediation takes place result in a withdrawal of the complaint.

Complaints that are not resolved through mediation are referred to a Tribunal member who renders a decision on the complaint following an oral or paper hearing. In an oral hearing, the member presides over a hearing where all parties, representatives and witnesses are present. A paper hearing is one where the member renders a decision based on written submissions by the parties. All complaints scheduled for an oral hearing are preceded by a teleconference during which procedural issues and technical questions are addressed. These pre-hearing conferences not only streamline the process but can also result in the withdrawal of the complaint.

With its focus on the informal resolution of complaints, the Tribunal has succeeded in closing 75% of its files without having to resort to a paper or an oral hearing since it began receiving complaints in early 2006. As mentioned above, complaints may be resolved through mediation or withdrawn at any step in the complaint process, such as the exchange of information or the pre-hearing conference.

The Tribunal's priorities and plans for 2009–2010 are intended to achieve similar results in the coming year.

Planning Highlights

The Tribunal plans to introduce settlement conferences to the alternative dispute mechanisms already available. Settlement conferences will provide the parties with an opportunity to discuss the strengths and weaknesses of their case with the assistance of a Tribunal member in an effort to resolve the complaint without a formal hearing.

Communication with the Tribunal's stakeholders is an ongoing priority given that a legislative review has been scheduled for 2010 and that the Tribunal's stakeholders will likely be consulted as to their views on the provisions of the legislation, including those related to staffing recourse. In addition, a plan to reactivate a Tribunal advisory committee has been developed and is expected to be implemented in early 2009.

The number of complaints submitted to the Tribunal has risen steadily since the Tribunal was established. The current economic climate could have an impact on both human resources management in the public service and labour relations which, in turn, could spark a greater increase in the number of

complaints before the Tribunal. Not only has the volume of complaints risen, but the complexity of the cases has as well: More deputy heads are using collective staffing processes, a trend that has significant repercussions for the Tribunal because of the number of parties involved. For example, in some files, there have been as many as 700 complainants, all of whom have to be contacted. In this context, the importance of an effective case management system cannot be underestimated. As such, the Tribunal continues to review its complaint process and policies and to develop modules for its case management system.

Program Activity: Internal Services

Human Resources (FTEs) **and Planned Spending** ($ thousands)

2009–10		2010–11		2011–12	
FTEs	**Planned Spending**[1]	**FTEs**	**Planned Spending**[1]	**FTEs**	**Planned Spending**[1]
9	1,478	9	1,478	9	1,478

[1] The planned spending includes earmarked funding provided in Budget 2009, resulting from Strategic Review to enable the Tribunal to pursue its mandate

Program Activity Summary

The Tribunal's internal services include: Human Resources, Finance, Information Management, Communications, Information Technology and Administrative Services, (including Travel, Acquisition Services etc.).

Planning Highlights

The Tribunal has identified a need to improve its internal communications. To this end, the Tribunal's information management system and Intranet site will be upgraded to ensure the flow of information among employees and members.

In order to continue to strengthen its human resources management, the Tribunal will develop measurement tools to manage performance, provide training opportunities for both members and staff and build a cooperative problem-solving model as the basis for its Informal Conflict Management System (ICMS). An ICMS is a system approach to dealing with workplace conflicts with informal processes whenever possible.

Section III

Supplementary Information

The following tables can be found on the Treasury Board Secretariat's website at: http://www.tbs-sct.gc.ca/estsd-bddc/index-eng.asp

Table 1: Green Procurement

Table 2: Internal Audits

Table 3: Evaluations